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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,401	02/10/2004	Thomas Edward Pitonyak	P-124638.3	1578

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,401

Applicant(s)

PITONYAK ET AL.

Examiner

Alexandra K Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

^ SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 23-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8,10,11,13-16,22 is/are rejected.
- 7) ☒ Claim(s) 4-7,9,12 and 17-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date filed 2/10/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-22, drawn to an agricultural implement with a center frame, wing member(s), and hinge plates, classified in class 172, subclass 311.
 - II. Claims 23-25, drawn to an agricultural implement with center frame, wing member(s), plowshares, axles, and rollers, classified in class 172, subclass 168.
 - III. Claims 26-32, drawn to an implement comprising a center frame and a hitch connector(s), classified in class 172, subclass 272.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group I has separate utility such as for seed planting or furrow digging. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group I has separate utility such as for seed planting or furrow digging. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group III has separate

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utility such as an agricultural implement not performing a rolling operation, but instead any type of leveling, planting, or digging operation. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Raman Dewan on October 1, 2004 a provisional election was made without traverse to prosecute the invention of group I, claims 1-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-32 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. **Claims 1, 3, 8, 10, 11, 13, 14, and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Moser (US 6,675,907).**

Regarding claim 1, Moser discloses an agricultural implement comprising:

- a substantially rectangular center frame, seen as center frame (36),
having a front edge, rear edge, and two side edges,

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- at least one substantially rectangular wing member, seen as inner wing section (37), having a front edge, rear edge, and two side edges,
- a plurality of center frame member hinge plates, seen as mounting plates ((87, 87) in Fig. 7, mounted on the first side edges of the center frame member, Fig. 7 illustrating the limitation of at least one of the hinge plates proximate to the front edge of the center frame member, and at least one of the hinge plates proximate the rear edge of the center frame member,
- a plurality of wing member hinge plates, seen as plates (94, 94) in Fig. 7, mounted on one of the side edges of each wing member, wherein at least one plate is proximate the front edge of each wing member and at least one plate is proximate the rear edge of the wing member (as shown in Fig. 7), and wherein the mounting plates (87, 87) configured to be pivotally connected to the plate (94, 94), and wherein once connected, the wing member is capable of being rotated between a first, parallel, working position and a second, folded, storage position as Figs. 1 and 2 illustrate, and
- at least one hitch connector shown in Fig. 1.

Regarding claim 3, Fig. 7 of Moser illustrates the inner wing section (37) located inboard of the first of the side edges of the center frame section (36) while in the folded-transport position.

Regarding claim 8, Moser discloses at least one gauge wheel assembly in column 7, lines 18-20 in describing depth gauge wheel assemblies (42) and (43).

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Regarding claim 10, Fig. 1 illustrates the claimed recitation of the center frame member hinge plates mounted on the second of the side edges of the center frame member.

Regarding claim 11, Moser meets this claimed recitation, just as discussed with regards to claim 3 above.

Regarding claim 13, a plurality of plow beams moveably attached to the center frame and to each of the wing members can be seen as the mounting bars (75, 76).

Regarding claim 14, a plurality of plowshares removeably attached to at least one of the plurality of plow beams can be viewed as the coulters seen in Fig. 1 (Col 4, lines 44-60).

Regarding claim 16, Fig. 7 of Moser illustrates the planar center frame member opening and a planar wing member opening.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 2, 15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moser (US 6,675,907).**

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Regarding claim 2, Moser fails to disclose the hitch connector located no more than 86.4 cm from the implement's center of mass. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the distance the hitch connector of Moser is located from the implement's center of mass to be no more than 86.4 cm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 15, Moser fails to disclose the coulters configured to be vertically and angularly adjustable, merely mentioning that they are conventional coulters. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the coulters of Moser to be adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Regarding claim 22, Moser discloses a bin, seen as tank (29) for storing liquid fertilizer (Col 6, lines 44-47), and a plurality of feeder tubes connected to the bin, seen as delivery tubes and hoses (Col 6, lines 47-55). Moser fails to disclose a *seeder* bin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fertilizer tank (29) of Moser to be a seeder bin, since Moser discloses an agricultural implement for liquid fertilizer application, which could simply be replaced with seeds for seed application, since it is known to deposit seeds in such agricultural implements.

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Allowable Subject Matter

9. Claims 4, 5, 6, 7, 9, 12, and 17-21 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
10/4/04